

AUG 14 2015

July 28, 2015

TERESA L. DEPPNER, CLERK
U.S. District Court

The Honorable Thomas E. Johnston

U.S. District Court for the Southern District of West Virginia
P. O. Box 2546
Charleston, WV 25329

RECEIVED
AUG 07 2015
BY: _____

RE: Victim Restitution for *U.S. v. Dennis P. Farrell, et al, and related cases*

Dear Judge Johnston,

On behalf of People Concerned About Chemical Safety and the 300,000 victims of the Elk River chemical leak, I am writing to beseech you to consider awarding victim restitution in the *U.S. v. Dennis P. Farrell, et al, and related cases* under the cy-près doctrine.

The Elk River chemical leak had life-altering impacts for those who experienced it. Undoubtedly, this and other lawsuits resulting from the disaster will produce much evidence to this effect. While many people have resumed normal water consumption, fear and mistrust amongst the populace lingers. Other cases have produced awards that assist the communities in resiliency efforts following similar crimes. In order to help the victims recover from this community trauma, this case should follow suit.

Over a year and a half following the event, the local and national media continues to document victim stories. In January 2015, on the one-year anniversary of the event, Rebecca Roth, mother of a two-year-old who was pregnant during the “water crisis,” told National Geographic:

[M]any of her neighbors still don't trust the safety of their water: "I'm not convinced that things have changed significantly."¹

Roth also told Huffington Post:

"I spent too much time last year being afraid. When my son Sid was born in August, I was relieved to count 10 fingers and 10 toes, but not all signs of health are so easy to see. It will be years before our family knows, for example, if the reproductive health of either of our kids has suffered at all because of the chemical spill. Water is the most important resource we have and it is essential to our children's health. We've put down roots in our community but they need water."²

Anoa Changa, a single mother raising two children with student loan debt, developed asthma following the Elk River chemical leak. Her children suffered breathing problems, headaches and upset stomachs. She spent at least \$700.00 on bottled water, prepared foods and gas to leave town and take showers.³ In January 2015, Changa told Huffington Post:

"I waited until April or so before we began using the water to shower. We never returned to drinking water or using it in food preparation. I have since relocated to Atlanta, Georgia, to be closer to family."⁴

Kevin Carte, former teacher and coach from St. Albans, West Virginia, told Huffington Post:

"We are now left to wonder what effect this chemical has had on us, and what future health problem may arise."⁵

¹ <http://news.nationalgeographic.com/news/2015/01/150109-west-virginia-chemical-spill-water-quality-regulations-environment/>

² http://www.huffingtonpost.com/2015/01/09/west-virginia-spill-anniversary_n_6437352.html

³ <http://billmoyers.com/2014/06/04/why-the-west-virginia-spill-wasnt-a-freak-occurrence/>

⁴ http://www.huffingtonpost.com/2015/01/09/west-virginia-spill-anniversary_n_6437352.html

⁵ http://www.huffingtonpost.com/2015/01/09/west-virginia-spill-anniversary_n_6437352.html

According to a June 2015 New York Times article, one and a half years following the disaster:

James Lewis still remembers the licorice smell of the water and how his skin itched when he showered... But like many people, Mr. Lewis, a construction worker and former chemical plant employee, and his girlfriend, a nurse, spent hundreds of dollars so they could use bottled water for several more months, just to be safe...“We were worried to death about our children,” Mr. Lewis said.

These stories help illustrate why we believe the court should consider awarding victims in a way that benefits the greater good of the community and helps build resiliency in the aftermath of the Elk River chemical spill. Specifically, we think that funds should be awarded to the Greater Kanawha Valley Foundation to establish a grant-making fund that supports projects actively working to improve the impacted counties in the areas of:

- Chemical disaster prevention;
- Water quality and infrastructure improvement;
- Development of long-term public health data and prevention strategies resulting from exposure to the Elk River chemical leak.

We believe that the Greater Kanawha Valley Foundation is an appropriate body to receive these funds as six out of the nine counties impacted by the disaster are central to their service area⁶. Additionally, we believe that it is appropriate to award the amount of one gallon of water (\$1.00) per victim (300,000) for one year (365 days):

$$\begin{array}{r}
 \$1.00 \text{ (one gallon of water)} \\
 \times 300,000 \text{ (victims)} \\
 \underline{\times 365 \text{ (days)}} \\
 \mathbf{\$109,500,000.00}
 \end{array}$$

⁶ <http://tgkvf.org/page.aspx?pid=380>

Minimally, we believe that the court should award (\$1.00) per victim (300,000) for the five months (~152 days) that crude MCHM was trapped in West Virginia American Water's filters.⁷

$$\begin{array}{r}
 \$1.00 \text{ (one gallon of water)} \\
 \times 300,000 \text{ (victims)} \\
 \times 152 \text{ (days)} \\
 \hline
 \$45,600,000.00
 \end{array}$$

We think that eligible projects should be a partnership between the public, government, and industry or should minimally demonstrate an ongoing public participation process.

An award for community improvement projects where violations of the Clean Water Act has occurred is not unprecedented. In the case of U.S. v. Kelly Plating Company, No. 1:14-CR-00225, (N.D. Ohio), the company and an employee were charged in a two-count indictment with Clean Water Act and conspiracy violations (33 U.S.C. § 1319(c)(2)(A); 18 U.S.C. § 371) for illegal discharges into the sewer system.⁸ The company agreed to make a \$25,000 charitable donation to the Cleveland Foundation to be used to improve water quality in Northeast Ohio.⁹ Likewise, in United States v. Loch Louman et al., No. 3:06-CR-00248 (E. D. Va.):

[T]he company was charged with one count of violating the CWA {33 U.S.C. 1311} and two counts of violating the Refuse Act {33 U.S.C. 407 and 411}. The parent company entered into a pre-trial diversion program which included a corporate wide compliance program including audits, paying a \$100,000 fine and

⁷ <http://www.wvgazette.com/News/201403250093>; It wasn't until June 12, 2014, approximately 5 months after the leak was reported, that the filter change was complete: <http://www.amwater.com/wwaw/About-Us/news.html>

⁸ http://www.justice.gov/sites/default/files/enrd/legacy/2015/04/13/Public_bulletin_August_2014.pdf

⁹ <http://www.justice.gov/usao-ndoh/pr/cleveland-metal-plating-company-fined-making-illegal-discharges-sewer-system>

donating \$350,000 to the Southern Environmental Enforcement Training fund for environmental enforcement training activities¹⁰

(emphasis added)

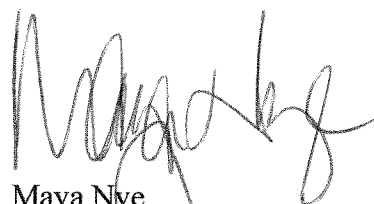
According to a May 1, 2015 article by Ken Ward, Jr. of The Charleston Gazette, support for community projects is no longer part of the Freedom Industries bankruptcy plan:

Under Freedom's new bankruptcy plan, payments to two different classes of chemical spill victims... would total about the same that would have been spent for public interest projects to benefit the community under a now-defunct settlement proposal made last year. ¹¹

We know through the bankruptcy lawsuit that criminals in this case have walked away with over \$1 million in addition to \$15 million the company's owners received in the sale of Freedom Industries. ¹² These criminals should not be allowed to walk away with money in their pockets. Instead, they should be held accountable by helping the community recover from the crime they perpetrated.

Thank you for your consideration.

Sincerely,



Maya Nye
Executive Director

¹⁰ <http://tiny.cc/07m40x>

¹¹ <http://www.wvgazettemail.com/article/20150501/GZ01/150509931-sthash.2wE63K3S.dpuf>

¹² <http://blogs.wsj.com/bankruptcy/2014/02/18/freedom-paid-millions-to-leaders-related-companies-before-spill-bankruptcy/>

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